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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/943,883	08/31/2001	Glen J. Anderson	450.330US1	2244
24333	7590	02/27/2007	EXAMINER	
GATEWAY, INC.			RUDY, ANDREW J	
ATTN: Patent Attorney			ART UNIT	PAPER NUMBER
610 GATEWAY DRIVE				
MAIL DROP Y-04				
N. SIOUX CITY, SD 57049			3627	
SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE		
3 MONTHS	02/27/2007	PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/943,883	ANDERSON ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Andrew Joseph Rudy	3627	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 12 December 2006.
- 2a) This action is **FINAL**.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 2-9, 24-27 and 29-40 is/are pending in the application.
  - 4a) Of the above claim(s) 24-27 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 2-9 and 29-40 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_.

## DETAILED ACTION

1. Claims 2-9 and 24-27 and 29-40 are pending. Claims 24-27 are still withdrawn from consideration as drawn to a non-elected invention.

### *Drawings*

2. The drawings submitted on December 12, 2006 are acceptable.

### *Claim Rejections - 35 USC § 112*

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
4. Claims 1, 3-9 and 29-39 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 35, lines 2-3, "a network appliance" is not clear in juxtaposition with "an originating user" in juxtaposition with the original disclosure, e.g. page 4, lines 7-8. The specification indicates that these are the same entity. However, Applicant attempts to present each as a separate element. No clarification was presented by Applicant.

Applicant's REMARKS with regards to the previous 35 USC 112 rejections are persuasive.

5. Claims 1-9 and 29-39, as understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Bezos et al., US 7,082,407.

Bezos discloses an electronic retail system comprising a notification module, e.g. 36-38, and an accumulator, e.g. Fig. 4, 152. Bezos does not explicitly disclose a data entry device. However, Bezos does disclose, e.g. col. 4, lines 57-67, a mechanism for making a purchase order. Official Notice is taken that Applicant's data entry device, notification system and accumulator have been common knowledge in the art prior to Applicant's filing date. To have provided Bezos a data entry device and accumulator for approval by an originating user would have been obvious to one of ordinary skill in the art in view of Official Notice. It is noted that intended use claim language, e.g. claim 35, lines 2-3, "configured to enable," are given little, if any, patentable weight in juxtaposition with positively recited claim language, e.g. claim 35, lines 2, "a network appliance." Applicant's December 12, 2006 REMARKS have been reviewed, but are not convincing.

Applicant's attempt at traversing the Official Notice findings as stated in the June 8, 2004 Office Action is inadequate. Adequate traversal is a two step process. First, Applicant must state their traversal on the record. Second, and in accordance with 37 C.F.R. § 1.111(b) which requires Applicant to specifically point out the supposed errors in the Office Action, Applicant must state why the Office Action statements are not to be considered common knowledge or well known in the art.

In this application, Applicant has not met step (1) as no traversal of Official Notice has been taken. Merely disagreeing with the analysis does not rise to the level of

traversal. Second, Applicant has failed step (2) since they have failed to argue why the Official Notice statements are not to be considered common knowledge or well known in the art. The standard of functionality is not convincing. Being not well known is not determinative, but whether it is known, even if in limited public circles. Because Applicant's traversal is inadequate, the Official Notice, e.g. common knowledge, statements are taken to be admitted as prior art. See, MPEP § 2144.03.

Applicant's REMARKS regarding Bezos notifies after the purchase is completed is noted. However, Applicant's claim language does not preclude such a phenomenon from occurring while still meeting in broad scope and content Applicant's claim language.

Applicant's REMARKS regarding claim 1 is noted. However, this is not in agreement with Applicant's December 12, 2006 Amendment.

6. Further pertinent references of interest are noted on the attached PTO-892.
7. Applicant's Information Disclosure Statement (IDS) submitted on October 1, 2001 is enclosed. The "Examiner Initials" were not included from the July 26, 2005 Office Action initialed IDS.
8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew Joseph Rudy whose telephone number is 571-272-6789. The examiner can normally be reached on Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ryan M. Zeender can be reached on 571-272-6790. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Andrew Joseph Rudy  
Primary Examiner  
Art Unit 3627